91-54

Supreme Court, U.S.
FILED
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NO. _____

UNITED STATES SUPREME COURT

OCTOBER TERM, 1990

ROBERT BORIS BEACHBOARD

V.

THE TRUSTEES OF COLUMBIA UNIVERSITY IN

THE CITY OF NEW YORK

PETITION FOR WRIT OF CERTIORARI

TO THE STATE OF NEW YORK COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

PETITIONER

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Does the order

appealed

from

finally

determine

the

action

within

the

meaning

of

the

Constitution?

Should

the

defendant

be

enjoined

from

petitioning

the

government?

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opinions, orders, findings of fact, and conclusions of law rendered in the case by the State of New York supreme court first department appellate division

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by the State of New York supreme court
New York county seventeenth page
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ROBERT BORIS BEACHBOARD V. THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK first page

THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK,

Plaintiff,

-against-

ROBERT BORIS BEACHBOARD,

Defendant.

New York Law Journal, APRIL 13, 1981, page 13, New York Law Journal, JUNE 10, 1981, page 6, New York Law Journal, MAY 11, 1982, page 12, New York Law Journal, MAY 12, 1983, page 12, 86 AD2d 990, 449 N.Y.S.2d 373, New York Law Journal,

AUGUST 8, 1983, page 5, [ AD2d ,] 560 N.Y.S.2d 1017, New York Law Journal, OCTOBER 26, 1990, page 21, 77 NY2d 834, 567 N.E.2d 982, 566 N.Y.S.2d 588, New York Law Journal, JANUARY 10, 1991, page 21, [77 NY2d , N.E.2d , N.Y.S.2d ,] New York Law Journal, MARCH 29, 1991, page 25 seventh page

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THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK v. BEACHBOARD, OFFICIAL EDITION NEW YORK LAW REPORTS, January 23, 1991, page iii, 562 N.Y.S.2d No. 2, yellow p. 21 eleventh page

the Constitution second page

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THE CONSTITUTION OF THE UNITED STATES.

AMENDMENTS TO THE CONSTITUTION. Art. I.

ninth page

THE CONSTITUTION OF THE UNITED STATES.

AMENDMENTS TO THE CONSTITUTION. Art. V.

ninth page

THE CONSTITUTION OF THE UNITED STATES.

AMENDMENTS TO THE CONSTITUTION. Article

XIV. Sec. I. tenth page

THE CODE OF THE LAWS OF THE UNITED STATES

OF AMERICA TITLE 28 § 1257 subsection (a)

eighth page

Judiciary Law, Section 770

seventeenth page

Article 78 eighteenth page

twentieth page

Penal Law Section 180.56

twenty-first page

CPLR 5015 twenty-fifth page

CPLR 2214(b) thirty-first page

Robert L. Stern Eugene Gressman Stephen

M. Shapiro, Supreme Court Practice, sixth edition (1986) seventh page

Elder Witt, Congressional Quarterly's Guide to the U.S. Supreme Court, Second Edition (1990) seventh page

section 500.3 twelfth page

22 NYCRR Section 170.1 seventeenth page

22 NYCRR 130.1 twenty-fifth page

22 NYCRR 130 twenty-sixth page

A reference to the official and unofficial reports of opinions delivered in the case by other courts follows.

New York Law Journal, APRIL 13, 1981, page 13

New York Law Journal, JUNE 10, 1981, page 6

New York Law Journal, MAY 11, 1982, page 12

New York Law Journal, MAY 12, 1983, page 12

86 AD2d 990, 449 N.Y.S.2d 373, New York Law Journal, AUGUST 8, 1983, page 5

[ AD2d ,] 560 N.Y.S.2d 1017, New York Law Journal, OCTOBER 26, 1990, page 21

77 NY2d 834, 567 N.E.2d 982, 566 N.Y.S.2d 588, New York Law Journal, JANUARY 10, 1991, page 21

[77 NY2d , N.E.2d , N.Y.S.2d ,] New York Law Journal, MARCH 29, 1991, page 25

A concise statement of the grounds on which the jurisdiction of this Court is invoked follows. The date of the entry of the judgment or decree sought to be reviewed is January 8, 1991. The date of the order respecting a rehearing is March 27, 1991. The statutory provision believed to confer on this Court jurisdiction to review the judgment or decree in question by writ of certiorari is THE CODE OF THE LAWS OF THE UNITED STATES OF AMERICA TITLE 28 § 1257 subsection (a).

The constitutional provisions involved in the case follow.

THE CONSTITUTION OF THE UNITED STATES.

AMENDMENTS TO THE CONSTITUTION. Art. I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

THE CONSTITUTION OF THE UNITED STATES.

AMENDMENTS TO THE CONSTITUTION. Art. V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb;

nor shall be compelled, in any criminal case, to be witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

THE CONSTITUTION OF THE UNITED STATES. AMENDMENTS TO THE CONSTITUTION. Article XIV. Sec. 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

The State of New York court of appeals dismissed an appeal upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution. The order appealed from upheld a denial of a motion of Robert Boris Beachboard to dismiss the complaint. Federal questions sought to be reviewed were raised in the State of New York supreme court in the January 21, 1981 ANSWER to the VERIFIED COMPLAINT. This ANSWER upholds rights to petition the government and to due process. The questions were not specifically addressed by the State of New York supreme court. Further federal questions sought to be reviewed were raised in the State of New York court of appeals in the November 21, 1990 jurisdictional statement of Robert Boris Beachboard. THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK v. BEACHBOARD, OFFICIAL EDITION NEW

YORK LAW REPORTS, January 23, 1991, page iii, 562 N.Y.S.2d No. 2, yellow p. 21

This statement upholds protection against perpetual jeopardy. A December 12, 1990 section 500.3 submission of Robert Boris Beachboard upholds rights to the equal protection of the laws.

The order appealed from does finally determine the action within the meaning of the Constitution. A state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort and of a United States court of appeals. A state court has decided an important question of federal law which has not been, but should be, settled by this Court, and has decided a federal question in a way that conflicts with applicable decisions of this Court. The allowance of the writ should ensue.

State of New York,

Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany

eighth

on the.....day

January

of.....A. D. 1991

Present, HON. SOL WACHTLER, Chief Judge, presiding.

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Mo. No. 1418 SSD 122

The Trustees of Columbia University in the City of New York,

Respondent,

v.

Robert Boris Beachboard,

Appellant.

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The appellant having filed notice

of appeal in the above title and due consideration having been thereupon had, it is

ORDERED, that the appeal be and the same hereby is dismissed without costs, by the Court sua sponte, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

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[SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT OCT 23 1990]

Kupferman,J.P., Asch, Smith, Rubin, JJ.

41228N The Trustees of Columbia University in the City of New York,

Plaintiff-Respondent,

-against-

Robert Boris Beachboard,

Defendant-Appellant.

Order, Supreme Court, New York County (Francis Pecora, J.), entered on or about December 1, 1989, which, inter alia, deemed defendant's motion to be one to vacate the order of the same court (Cohen, B., J.), entered on or about June 4, 1981, holding him in contempt of court and one to vacate the order of the same court (Wallach, Richard, J.), entered on or about July 8, 1982, ordering the arrest of defendant by reason of said contempt of court, and

denied said motion, unanimously affirmed, without costs.

Defendant alleged only that the complaint against him was "inconvenient" and that no officer had as yet attempted to arrest him. These did not constitute cognizable grounds for vacatur of the prior orders of the court and his motion was therefore properly denied.

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THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT

ENTER:

ALAN M. BERGER

DEPUTY Clerk.

48

[SEP 12 1989]

SUPREME COURT, NEW YORK COUNTY

IAS PART 52

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THE TRUSTEES OF COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK,

Plaintiff,

-against- Index No. 755/81

ROBERT BORIS BEACHBOARD,

Defendant.

----------x

FRANCIS N. PECORA, J.:

Defendant moves to vacate an order of arrest entered against him on June 30, 1982. Plaintiff seeks to enforce the order; seeks an order for defendant's arrest and incarceration pursuant to Judiciary Law, Section 770 and seeks an order granting sanc- tions of the sum of $10,000.00, pursuant to 22 NYCRR Section 170.1.

The court will attempt to summarize

a long and tortuous case history. Plaintiff's action had commenced in January 1981, seek- ing an injunction against defendant from bringing any new judi- cial or administrative actions or proceedings against plaintiff and against any third parties, which, if successful, would ad- versely affect plaintiff or its interests. This action was com- menced after the following events had occurred.

Defendant, an undergraduate student of plaintiff's univer- sity, had been rejected as an applicant to the Graduate School for the Arts and Sciences for the seventh time. Defendant had



claimed he had been rejected because he was born in France, al- though he is now a United States citizen. Plaintiff claims that his academic record was too poor for him to qualify for admis- sion.

Defendant brought two Article 78

proceedings against plain- tiff, in an attempt to overturn two of his rejections The first proceeding was dismissed on statute of limitation grounds. The second proceeding was also dismissed on similar grounds. The Ap- pellate Division and Court of Appeals dismissed defendant's ap- peals. Defendant unsuccessfully sought appeal in the Supreme Court of the United States.

Defendant had also brought an action in Civil Court alleging medical malpractice by plaintiff against defendant while defen- dant was a student. This action was subsequently dismissed. Defendant brought another action in Civil Court, seeking a deter- mination that he did not owe $61.26 on a past due dormitory ac- count that had accrued years before when he was a student and which had never been paid. The court dismissed the action and the

Appellate Term, First Department affirmed the order of the Civil court and denied leave to appeal to the Appellate Division, First Department.

Defendant had also filed claims with the federal and city anti-discrimation agencies, alleging discrimination on the part of plaintiff in its decision to reject defendant's application for admission. Defendant also brought an unsuccessful mandamus action against Patricia Harris, then Secretary of Health, Educa- tion and Welfare to compel her to reverse the findings of non-



discrimination from her office. Defendant had also commenced an unsuccessful Article 78 proceeding against the New York City Tax Commission seeking a revocation of plaintiff's university's real property tax exemption.

Plaintiff, in its complaint, stated

that these and other ac- tions were sufficient proof tht defendant was harassing plain- tiff. Plaintiff sought a preliminary injunction enjoining defendant from future harassment. The motion was granted on default by Justice Klein on February 20, 1981. Defendant moved to open said default but the motion was denied in April 1981.

On April 6, 1981, in violation of this order, defendant issued and served upon the Bursar of plaintiff's university a 'Request to Appeal' in Criminal Court, alleging that she was guilty of 'rent gouging' in violation of Penal Law Section 180.56 in that she, as Bursar, had sent him a dormitory charge of $240.75, which he did not owe.

Plaintiff brought a motion to hold defendant in contempt for violating the injunction. The contempt motion was granted by Justice B. Cohen on June 1,

1981. Defendant was fined $250.00 and was ordered improisoned if he refused to pay within ten days. The penalties would be waived if defendant were to promptly withdraw his criminal complaint and obey the injunction. The or- der was affirmed by the Appellate Division on February 25, 1982.

Defendant did not pay the fine. By order dated July 8, 1982, Justice Wallach ordered that "the Sheriff of any county in the state of New York, wherein defendant may be apprehended is directed to forthwith arrest (defendant) and produce him before



the Justice then presiding at Special Term, Part II, of this court to be committed or for further disposition as the court, in its discretion, shall direct."

On March 16, 1983, defendant brought

a motion seeking an or- der exempting him from the arrest order. By order dated April 29, 1983, Justice Blyn denied defendant's motion.

For almost seven years, the Sheriff has not been able to implement the order and produce defendant before this court. Defendant denies that he has been out of the jurisdiction. At this time, however, he brings a motion to vacate the prior arrest order.

Plaintiff states that the motion should be denied because of the doctrine of law of the case and res judicata. Plaintiff states that defendant has shown no basis for his motion. In ad- dition, plaintiff discloses evidence that defendant has been con- tinuing his litigation in other jurisdictions. Subsequent to the arrest order, defendant brought suit against the Middle States Association of Colleges and School, Inc.

This organization is responsible for the certification of universities that meets educational standards which it promulgates. The suit was brought in the United States District Court for the District of Columbia which dismissed defendant's case. His appeal to the Court of Ap- peals for the District of Columbia was denied. Paintiff offers evidence of defendant's unsuccessful suits against plaintiff's university in U. S. District Court in New Jersey, U. S. District Court in the District of Columbia and the Superior Court of Connecticut as well as unsuccessful appeals of said suits.



Plaintiff contends that defendant's actions are egregious and frivolous. It urges the court to implement the prior orders of this court and have defendant arrested for contempt of court.

Plaintiff also seeks sanctions pursuant to 22 NYCRR 130.1 in light of defendant's frivolous conduct. Plaintiff requests the harshest sanctions permissible under said rule.

Defendant has not offered any reason or evidence why the or- der of contempt should be vacated. According to CPLR 5015, such a motion must be made within one year upon notice or discovery of the order of which defendant complains. Defendant herein sought to reverse the July 8, 1982 order in a motion before Justice Blyn on April 1983. The Judge refused to exempt him from arrest under this order of contempt. Defendant remains in contempt of court since 1982.

Defendant has not denied bringing a suit against the Bursar subsequent to the preliminary injunction order;and he has not denied bringing subsequent suits against plaintiff in other jurisdictions.

He has clearly and continually committed an abuse of process. His only defense is a general denial of harassment. This is not sufficient. He is clearly in contempt of court. The order should not be vacated. It should be enforced and defendant is subject to immediate arrest.

As for sanctions, 22 NYCRR 130 grants the court the power to impose sanctions for frivolous conduct in civil litigation. Conduct is deemed frivolous if it is completely without merit in law or in fact and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law, or it



is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another. Discre- tion in compelling or imposing penalties for non-compliance is

soundly vested in the trial court. In considering the cir- cumstances, the court considers sanctions to be proper. In light of defendant's constant harassment of plaintiff, which has been continuing unabated over the years, including the period after the contempt order was issued, and which has been an obvious waste of litigation and a misuse of the legal process, the court finds that the sum of $1,000.00 is an appropriate fine.

Defendant's motion is denied. Plaintiff's motion is granted.

Settle order.

Dated: SEPTEMBER 11 ,

1989.

FNP

J.

S.

C.

State of New York,

Court of Appeals

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-seventh day of March A. D. 1991

Present, HON. SOL WACHTLER, Chief Judge, presiding.

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Mo. No. 203

The Trustees of Columbia University in the City of New York,

Respondent,

v.

Robert Boris Beachboard,

Appellant.

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A motion having heretofore been

made herein upon the part of the appellant for reconsideration of this Court's January 8, 1991 order of dismissal, papers having been

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* STATE OF NEW YORK *

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[seal]

EXCELSIOR

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COURT OF APPEALS

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submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Donald M. Sheraw

Donald M. Sheraw

Clerk of the Court

supreme COURT OF THE STATE OF NEW YORK

COUNTY OF New York

----------x

THE TRUSTEES OF COLUMBIA UNIVERSITY

IN THE CITY OF NEW YORK,

Plaintiff,

-against-

ROBERT BORIS BEACHBOARD,

Defendant.

----------x

Notice of Motion

Index No. 755

755

Name of Assigned

Judge .....

Oral argument is

requested [ ]

Upon the affidavit of Robert Beachboard, sworn to on April 28, 1989, and upon the REQUEST FOR JUDICIAL INTERVENTION and this Notice of Motion,

the Defendant will move this court at the 60 CENTRE ST Courthouse, New York, New York, on the eighth day of May, 1989, for an order amending an order and dismissing the complaint upon the grounds that they should be modified.

The above-entitled action is for an injunction. Pursuant to CPLR 2214(b), answering affidavits, if any, are required to be served upon the undersigned at least seven days before the return date of this motion. [illegible]

Dated: April 28, 1989

Robert Boris Beachboard
Attorney for moving party.
Address: Post Office Box 250212
New York
New York 10025-1533
Telephone number: 864

TO: Byron Golden
Attorney for Plaintiff

Address: Byron Golden

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